

**S.B. Civil Writ Petition NO.1604/2005**

**Mohmmad Sadiq**

**vs**

**Parwati Devi**

**DATE OF ORDER : - 12.5.2005.**

**HON'BLE MR. PRAKASH TATIA,J.**

Mr.Vijay Mehta, for the petitioner.

Mr.RK Thanvi, for the respondent

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Heard learned counsel for the parties.

The petitioner is aggrieved against the orders Annex.2 dated 11.1.2005 and Annex.4 dated 15.2.2005. The trial court by order dated 11.1.2005 rejected the petitioner's prayer for summoning the plaintiff for cross-examination. The petitioner submitted application that plaintiff in other civil suits no.1113/03, 309/03 and 169/03 gave different statement and also admitted that few shops are lying vacant near the plaintiff's house. Therefore, defendants want to cross-examine the plaintiff so that the defendant may confront the plaintiff with the statement, which plaintiff gave in other suits. The said application of the petitioner was rejected by the trial court while relying upon the judgment of this Court reported in WLC Raj (UC) 2000

323. The other application of the petitioner, which was submitted after the petitioner's application under Order 18 Rule 17 CPC was also rejected by the trial court by which the petitioner sought amendment of the written statement. The trial court observed that the petitioner-defendant already took a plea in the written statement that few shops are lying vacant and, therefore, the petitioner's pleading on this point is already there and, therefore, there is no need to permit the amendment.

According to learned counsel for the petitioner, the court below has committed serious illegality in dismissing the petitioner's both applications in view of the fact that there is a statement on oath of the other party which petitioner wants to rely upon and for that purpose the petitioner wants to confront.

Since the trial court dismissed the petitioner's application after considering the judgment of this Court referred above in a matter of recalling of the witnesses and dismissed the petitioner's application for amendment of the written statement on the ground that there are sufficient pleadings already on record of the defendant, this Court is not inclined to interfere in these two orders because in the facts of this case, these orders can well be examined by the appellate court in case there arises any occasion for the petitioner to challenge these orders in

regular course after the decision of the trial court because of the reason that the factual aspects of the case shall also be required to be considered for the purpose of deciding the illegality of these two orders. The orders have not been passed wholly without jurisdiction or so perverse so as to call for interference by this Court under Article 227 of the Constitution of India.

In view of the above, the writ petition of the petitioner is dismissed. Consequently, the stay granted by this court is vacated and the stay petition is also dismissed.

**(Prakash Tatia), J.**

c.p.goyal/-